Sup Ct case No 6/2018

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

DR SYLVIA BLYDEN - PETITIONER/RESPONDENT

AND

1. THE CHIEF ELECTORAL COMMISSIONER - RESPONDENT
2. NATIONAL ELECTORAL COMMISSION - RESPONDENT
3. HIS EXCELLENCY JULIUS MAADA BIO - RESPONDENT/APPLICANT
4. SIERRA LEONE PEOPLES' PARTY - RESPONDENT/APPLICANT

CORAM;
THE HONOURABLE MR JUSTICE N C BROWNE-MARKE,
JUSTICE OF THE SUPREME COURT
THE HONOURABLE MR JUSTICE E E ROBERTS,
JUSTICE OF THE SUPREME COURT
THE HONOURABLE MS G THOMPSON, JUSTICE OF THE SUPREME COURT

COUNSEL;
I SOURIE, ESQ for the Petitioner, DR SYLVIA BLYDEN
MS BERYL CUMMINGS and D E TAYLOR ESQ for the 1st and 2nd Respondents
G BANDA-THOMAS ESQ, A SANGARIE ESQ, M MEWA ESQ, S U B SAFFA ESQ and J A KALLON ESQ for the Respondents/Applicants
L DUMBUYA ESQ for Dr S M W KAMARA, 1st Petitioner in Sup Ct Case No 7/2018 and the other 2 Petitioners

RULING DELIVERED THE 18th DAY OF JULY, 2018

BROWNE-MARKE, JSC

THE APPLICATION

1. This is an Interlocutory Application filed on 29th May, 2018, brought on behalf of His Excellency Rtd Brigadier Julius Maada Bio, "hereafter, *'HE The President'*, and the Sierra Leone Peoples' Party, the 3rd and 4th Respondents respectively, in the Election Petition brought by Dr Sylvia Blyden against the

election of HE The President as the winning candidate in the last Presidential election. As regards that part of the heading used by the Applicants' Solicitors in this Application in relation to the parties, it should be noted that the Chief Electoral Commissioner and the National Electoral Commission, are not Applicants in this Application. It is incorrect therefore to describe them as such. The Application seeks to consolidate the Petition brought by Dr Blyden, that is, SC case 6/2018 with that brought by Dr Samura Kamara, Alhaji Minkailu Mansaray and Dr Osman Foday Yansaneh, that is, SC Case 7/2018. In Dr Blyden's Petition, the Respondents are respectively, the Chief Electoral Commissioner, The National Electoral Commission, HE Julius Maada Bio, and the Sierra Leone Peoples' Party. In the Petition brought by Dr Samura Kamara and 2 others, the Respondents are three in number; Mohamed N'fah Allie Conteh, the National Electoral Commission, and HE Rtd Brig Julius Maada Bio:

2. For convenience, all references to the "*Petitioner*", are references to Dr Blyden; references to 1st and 2nd Respondents, are to the Chief Electoral Commissioner and the National Electoral Commission respectively; references to the Respondents/ Applicants are to HE The President and the SLPP, respectively; and references to the 2nd Petitioner are to Dr Samura Kamara, the 1st Petitioner in the Petition filed on 9th April, 2018 and also representing the other two Petitioners in that case.

LETTERS/MEMOS FROM THE PETITIONER

3. Before the Application was first heard last Thursday, the 12th instant, this Court's Registry received two letters/ memos from Dr Blyden, stating that she was away from the jurisdiction. In the first, dated the 9th instant, she said she would instruct Counsel to appear on her behalf if the Court was minded to proceed, and that she had only been served with Notices of Appearances by the 3rd and 4th Respondents/Applicants, but not with the Motion herein. In her second letter, she stated that she had instructed Mr Lansana Dumbuya to appear as Counsel on her behalf. On Monday last, the 16th instant, the Registry received another piece of correspondence from Dr Blyden, bearing the same date. It was addressed to the Master and Registrar of the High Court, and to the Registrar of this Court. In that letter or memo, Dr Blyden first purports to instruct this Court's Registrar

and the Master and Registrar, to draw this Court's attention to a "*Certificate*" which she says was issued by the Registry. She also contends that the Applicants herein lack locus standi for failure to comply with Rule 92 [1] of the Supreme Court Rules, 1982 - hereafter "*the Rules*". She also states that contrary to what is deposed to in the affidavit of service of Eustace Sorbeh, she has no office at Rawdon Street. As to this contention, we note that in her Petition, she stated her address for service as 24 Garrison Street. It is an address within walking distance of this Court, and we know where it is vis-à-vis Rawdon Street. In her 3rd paragraph, she alleges that this Court '*.....is 'rejecting' [sic] for Lansana Dumbuya esq to represent my interests which diverge from interests of his other clients in related matter SC7/2018.....*' As to this allegation, the true position is that Mr Dumbuya informed this Court that as Solicitor and Counsel for Dr Samura Kamara, the 2nd Petitioner; he had no objection to the application for Consolidation; but that as Counsel for Dr Blyden, he had instructions to oppose the same. These were evidently contradictory instructions. This Court then drew his attention to the Legal Practitioners' Code of Conduct which instructs Counsel as to what he should do in such circumstances, and directed him to so inform Dr Blyden. As Mr Sourie did appear before us on the 16th instant for Dr Blyden, it is clear our guidance was taken in good part.

PRINCIPAL ORDER SOUGHT BY THE APPLICANTS

4. To return to the substance of the Application before us, it is for the two Petitions I have referred to supra, to be consolidated into one action. Mr Banda-Thomas, Counsel for the Applicants, during the course of argument, indicated that this was the purport of the Application, and, not that both Petitions should be tried or heard simultaneously, another course of proceeding which this Court could order. The basis of the Application is Order 4, Rule 4 of the High Court Rules, 2007, hereafter, *HCR, 2007*. There is no provision in our Rules for actions to be consolidated, but Rule 98 states that where no rules have been expressly provided for the procedure to be followed in any process maintainable in this Court, the appropriate High Court Rules should be used instead.

ORDER 4 RULE 1 OF THE HIGH COURT RULES, 2007

5. Order 4 Rule 4[1] HCR, 2007 is the appropriate Rule. It states; *"Where two or more causes or matters are pending in Court, and on an application to the Court or Judge it appears to the Court or Judge that; [a] some common question of law or fact arises in both or all of them; [b] the rights to relief claimed in the causes or matters are in respect of or, arise out of the same transaction or series of transactions; or, [c] that for some reason it is desirable to make an order under this sub-rule, the Court or Judge may order those causes or matters to be consolidated on such terms as it thinks just or, may order them to be tried at the same time, or, one immediately after another; or may order any of them to be stayed until after the determination of any of them. [2] Where the Court or Judge makes an order under subrule [1] that two or more causes or matters are to be tried at the same time, but no order is made for those causes or orders to be consolidated, then a party to one of those causes or matters may be treated as if he were a party to any of those causes or matters for the purpose of making an order for costs against him or, in his favour."* As I have indicated above, the preference of the Applicants is that both actions should be consolidated rather than both being tried at the same time.

ORDER 4 RULE 9 WHITE BOOK 1999

6. Rule 4 HCR, 2007 is verbatim et literatim [verb lite] Order 4, Rule 9 of the English Supreme Court Rules, 1999 - White Book, 1999. The HCR, 2007 permit reference to the notes to those rules where they are the same as ours. The relevant notes to those rules are at page 40 of the White Book. They state;

"A cause or matter is 'pending' for the purpose of this rule as soon as the writ is issued, and therefore the court has jurisdiction to entertain an application for the consolidation of two or more causes or matters even though one or more of the writs have not been served..... The main purpose of consolidation is to save costs and time, and therefore it will not usually be ordered unless there is "some common question of law or fact bearing sufficient importance in proportion to the rest" of the subject-matter of the actions " to render it desirable that the whole should be disposed of at the same time"..... Where this is the case, actions may be consolidated where the plaintiffs are the same and the defendants are the same, or, where the

plaintiffs or defendants or all are different..... The circumstances in which actions may be consolidated are therefore generally similar to those in which parties may be joined in one action under order 15, r 4..... There may, however, be further circumstances which will militate against an order being made. Two actions cannot be consolidated where the plaintiff in one action is the same person as the defendant in another action, unless one action can be ordered to stand as a counterclaim or third party proceedings in another action. Moreover, as one firm of solicitors will usually be given the conduct of the consolidated action on behalf of all the plaintiffs it is generally impossible to consolidate actions in which different solicitors have been instructed..... unless all plaintiffs agree that one firm of solicitors shall act on their behalf, or, unless there can be a partial consolidation...."

7. The Learned Editors of the 1999 White Book have given examples of the latter course of action - i.e. *"partial consolidation". Where the question of liability is the same in more than one action, for instance, in an action for damages for personal injuries, the action could be given to one plaintiff's solicitor, and be consolidated up to the point of deciding liability, but leaving the actions separate as to quantum of damages. The Learned Editors go on to state at page 31 that no order for consolidation will be made without hearing all parties affected, and therefore it will only be made on the hearing of applications in all actions.....'*
8. What I have stated above is the position in the High Court, and I followed this procedure when I ordered consolidation of two actions in the respective cases CC5/09 and CC 9/09 - OLIVE MUSA v ALHAJI SWARRAY and OTHERS, Ruling delivered 2nd December, 2010. There, two sets of proceedings had been commenced: one before SEY, J and the other before me: on the expiration of SEY, J's contract in 2010 it became necessary to continue the action which had been pending before her, to another Judge. It was at this point in time J B Jenkins-Johnston esq, Counsel for Mrs Musa moved the Application before me. The Application was granted, and the appropriate directions for the future conduct of the action were also given.
9. In the present instance, one of the Petitioners, Dr Blyden has presented the Petition in-person, and the other, Dr Kamara is represented by Counsel. But the principal relief and Order sought by both of them is the same, the annulment of the election of HE The President. Another factor which is

highly relevant is that the Petitions have been brought and filed in this Court. Our procedure is governed by Our Rules. When hearing a Petition in respect of a Presidential Election, this Court does so in the exercise of its original jurisdiction, and not in the exercise of its appellate or supervisory jurisdiction.

RULE 98 - SUPREME COURT RULES, 1982

10. Rule 98 states; *''Where no provision is expressly made in these rules relating to the Original and the Supervisory Jurisdiction of the Supreme Court, the practice and procedure for the time being of the High Court shall apply mutantis mutandis"* - with the necessary changes being made. It follows, that in adopting the rules utilized or applicable in the High Court, we must adapt them to the procedure followed in this Court. Rule 97 deals with the procedure to be followed where this Court is exercising its original jurisdiction. A case could be determined on the basis of the respective statements of case filed by either side to the litigation without an oral hearing. This is the effect of Rule 97[1]. The Court may, if it thinks fit, decide to hear oral evidence. So far, there is no precedent for this, and in our view, such a course will only be permitted in extremely limited circumstances. In these several respects, an action being heard in the Supreme Court, be it a Presidential Election Petition, or, an Originating Notice of Motion, differs from an action being tried in the High Court.
11. It is for this reason that the Election Petition Rules, 2007 specify the proceedings to which they are applicable in Section 1 thereof; *"These Rules have effect in relation to all proceedings brought in the High Court to hear and determine whether - [a] any person has been validly elected as a member of Parliament; and [b] the seat of a Member of Parliament has become vacant."* The last time express provision was made for a Presidential Election was in 1985 with the passing of the Presidential Elections Act - Act No 1 of 1985 as amended subsequently by Acts Nos. 4 and 5 of 1985. Section 21 of the Principal Act made a challenge to the election of a President, non-justiciable - the Returning Officer's [the Chief Justice's] decision on whether the then sole candidate had been duly elected, was final. Presently, the hearing of an Election Petition in the High Court invariably involves the calling of several witnesses though this could avoided, if the

Trial Judge so orders, by the filing of affidavits of evidence. Whichever way one looks at it, the procedure for the hearing of a petition into the election of a Member of Parliament, is radically different from that which could be used in a petition relating to a presidential election.

12. It follows that the caution issued by the Learned Editors of the White Book, 1999 that an order for consolidation ought not to be ordered where there is more than one plaintiff, and where there is more than one solicitor appearing for each of them, does not apply in this Court where it is unlikely in the extreme that oral evidence will be called. The imperative here is the result which each petitioner seeks to achieve, and, as I have stated above, it is the annulment of the election of the 3rd Respondent as President. The directions which this Court will give, will take into consideration the evident differences between conducting a trial in the High Court, and the hearing of an action or Petition in this Court.

APPLICANTS' LOCUS STANDI

13. Dr Blyden also addressed another issue in her letter of the 16th instant, i.e. the locus standi of the 3rd and 4th Respondents. She states; "..... *Thus, when I left Sierra Leone for my medical care overseas, I was of the belief that the 3rd and 4th Respondents currently lack locus standi in this matter UNTIL they first and foremost make an application to the Supreme Court, under the 1982 Supreme Court Rules, for an enlargement of time, or, an extension of the period within which they can abide by the dictates of Rule 92[1]*."

14. We are of course, fully aware of the provisions of Rule 92[1]. In SC case 5/2015 - SLPP and PMDC v AG and MJ and Others, Mr Charles Margai took objection to Mr Berthan Macaulay proceeding with an interlocutory motion without first filing a statement of case on behalf of the defendants he was representing. We ruled that Mr Macaulay could do so as his application had to do with the jurisdiction of this Court to hear the Plaintiffs' Application, and as a ruling in his favour would of necessity have rendered it unnecessary for him to go on to file a statement of defence on behalf of the defendants he was representing. The Application herein does not go to the jurisdiction of this Court, but to a matter which should be dealt with before going into the merits of each case.

15. Without going into the merits of the decision, I shall here refer to SC case 4/2013 - JOHN OPONJO BENJAMIN and 2 others v DR CHRISTIANA THORPE and 3 others, where this Court ruled on 18th April, 2013, inter alia, that the issue of locus standi depended on whether a respondent had filed a notice appointing a legal practitioner to act as his agent or, stating that he intends to act for himself, and that the locus standi of a respondent was not dependent on whether he had filed an answer to the petition.
16. I have dealt with the letters sent in by Dr Blyden, not because they constitute documents filed in the suit brought by her, but because she has presented the petition in person, and, according to her, is out of the jurisdiction. Had these letters or memoranda been written by a Legal Practitioner, they would not have been countenanced. There is a well-known method for taking objection to the opposite party's line or course of conduct in litigation in all our Courts. I note that she has not indicated in any of her letters where, or how she could be reached, but as she has filed an address for service, that should suffice for present purposes. Mr Sourie did indicate that he would be travelling out of the jurisdiction on Wednesday 18th instant. So, all documents for service on Dr Blyden will of necessity be served on her at her address for service.

THE MERITS OF APPLICANTS' APPLICATION

17. Turning to the merits of the Application herein, it is supported by the respective affidavits of Mr A Y Brewah deposed and sworn to on 28th May and on 6th June, 2018. The reasons for making the Application are set out in paragraphs 6 - 9 of his first affidavit; common questions of law and fact arise in both petitions; the reliefs claimed in both petitions arose out of the last Presidential election; and that it would be expedient to consolidate both actions. The two Petitions are exhibited thereto. I have examined both of them, and as I have stated above, the principal relief claimed in both is the annulment of the election of the 3rd Respondent as President. The certificates attached to the documents exhibited in the affidavit were incorrect, and we asked Counsel, Mr Banda-Thomas, to ensure that corrections were done in a supplemental affidavit. This was done by one Mr Musa Mewa, a partner in the firm of Brewah and Co. by way of affidavit

deposed and sworn to on the 13th instant, but only filed on the 16th instant. No affidavit in opposition has been filed.

18. Mr Banda-Thomas also referred the Court to the consolidated cases of SC case No 1/2007 - ABUBAKARR CONTEH v S E BEREWA and another; and SC case No 2/2007 - C F MARGAI v S E BEREWA and another. Both cases are to be found in the bound volume of Supreme Court Judgments for 2007. Both cases were consolidated by Order of the Court made on 26th July, 2007 as they dealt with the same subject matter; the eligibility of Mr Berewa to contest the 2007 Presidential Election. It is true that both matters relate to the nomination of a Presidential candidate, and not to the election of a President, but in my respectful view, that is a distinction without a difference.

19. I have set out above, the factors the Court should consider when deciding for consolidation. The true effect of the BEREWA decision is that consolidation is something this Court could order.

THE POSITION OF THE 2ND PETITIONER

20. At the hearing on the 12th instant, Mr Dumbuya informed the Court that Dr Samura Kamara whom he was representing had no objection to the Application. As he was also representing Dr Blyden that day, he informed us that she had instructed him to object to the Application. It was at that stage the Court pointed out to him that he could not properly, in view of the Legal Practitioners' code of conduct, proceed with those instructions as they contradicted the instructions of the 2rd Petitioner for whom he was both Solicitor and Counsel. He was not Solicitor for Dr Blyden. The Court directed, as appears in my minutes of the proceedings, that Mr Dumbuya should write a letter to Dr Blyden, copying in the Court, stating that he could not continue to appear for her, and that she should instruct Counsel to appear on her behalf to reply to the Application on Monday 16th July, 2018.

MR SUMBUYA'S PRELIMINARY OBJECTION

21. Prior to this, Mr Dumbuya had raised a preliminary objection. He referred to Rule 28 of the Election Petition Rules, 2007. No answer had been filed by the 3rd and 4th Respondents. Our response was that it was not absolutely necessary for that to be done by the Respondents before coming up with the

Application herein. Looking through the documents filed, it appears that Mr Dumbuya has already filed a statement of case on behalf of the 2nd Petitioner, a procedure mandated by Rule 92 SCR, 1982, and not by the Election Petition Rules, 2007. The question of the applicability of all the provisions in the Election Petition Rules, 2007 will, if necessary be dealt with at the main hearing. At the hearing on the 16th instant, Mr Dumbuya reiterated that, on behalf of the 2nd Petitioner, he had no objection to the Orders sought.

THE 1ST AND 2ND RESPONDENTS POSITION

22. Ms Cummings on her part said that the 1st and 2nd Respondents had no objection to the Application. In addition, she notified the Court that in the event the Order sought was granted, she would be handling those aspects relating to Dr Blyden's Petition; and that Mr D E Taylor would be handling those relating to the 2nd Petitioner's Petition.

MR SOURIE APPEARS FOR THE 1ST PETITIONER

23. At the hearing on the 16th instant, Mr Sourie announced his representation for Dr Blyden. He reiterated the position Dr Blyden had taken in her letter of the same date, that the 3rd and 4th Respondents had not complied with Rule 92, and that a Certificate of Non-Compliance had been issued. But at the same time, Dr Blyden was not opposed in principle to the Application. She was only insisting on full compliance by the 3rd and 4th Respondents with Rule 92.

24. In his reply to Mr Sourie, Mr Banda-Thomas said that Rule 92 does not preclude his clients from seeking interlocutory relief. Further, that since the Petitions were filed, no new or fresh steps had been taken to foreclose the Respondents/Applicants. He said further that the Respondents/Applicants intend to file objections to the Petitions, and will not be in a position to do so if previously, they had each filed a statement of case or, answer. Thereafter, we adjourned for ruling.

CONCLUSION

25 We have given careful consideration to this Application and it is our judgment, in view of the authorities cited, that it should be granted. We

note, and we have borne in mind that Dr Blyden is unrepresented by Counsel. Due consideration will be given to that in the directions we shall give. It is clear that the points of law and the facts relevant to the issues in dispute are the same, or very much the same.

26. The Application for Consolidation of the two Petitions is hereby granted and we give the following directions.

i. PURSUANT TO THE ORDER CONSOLIDATING SC case 6/2018 and 7/2018 the new heading for the Consolidated action shall be;
"Sup Ct Cases 6 and 7/2018
The rest of the headings including the names of the parties, shall follow, that for S.C. Case 6/2018 preceding SC Case 7/2018. A draft of the new heading shall be submitted to the Court for approval, by Counsel for the Respondents/Applicants after serving the said draft on the 1st Petitioner at her address for service, 24 Garrison Street, Freetown, and on the Solicitors for the 2nd Petitioner, and on the Solicitors for the 1st and 2nd Respondents.

ii. Any further or other Interlocutory Application to the Court, shall be filed within 5 days of the date of this Order.

iii. Unless otherwise ordered, the 1st Petitioner, Dr SYLVIA BLYDEN shall file and serve her statement of case within 15 days of the date of this Order; The 2nd Petitioner, DR SAMURA KAMARA who is also the 1st Petitioner in S C Case 7/2018, has already filed a Statement of Case. The Petitioners in SC Case 7/2018 shall, if they so desire, amend, file and serve their statement of case filed on 9th April, 2018.

iv. Liberty to Apply in order to give effect to any of the above Orders.

v. Costs in the Cause.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, JSC

THE HONOURABLE MR JUSTICE E E ROBERTS, JSC

THE HONOURABLE MS JUSTICE G THOMPSON, JSC

11

SUPREME COURT
SIGN
DATE

True Copy

REGISTRAR Supreme Court